

\* ORIGINAL \*

1 Robledo, Paul, A - AZDOC #250767  
2 ASPC - Lewis - Bachman Unit  
3 P.O. Box 3500  
4 Buckeye, AZ 85326  
5

COURT OF APPEALS DIVISION ONE  
STATE OF ARIZONA  
FILED

JAN 24 2014

RUTH WILLINGHAM, CLERK  
BY JD

6 IN THE ARIZONA COURT OF APPEALS  
7 DIVISION ONE  
8

9 Paul Anthony Robledo, 10 <i>Petitioner,</i>	Appeals Court Case Number: 11A CR-14-0062 PRPC
11 <i>vs.</i>	Maricopa County Superior Court
12 State of Arizona, 13 <i>Respondent.</i>	Case Number: CR-2009-110121-0015E
14	PETITION FOR REVIEW
15	

16  
17 Pursuant to Rule 32.9(c) of the Arizona Rules of  
18 Criminal Procedure, Petitioner requests that the Arizona  
19 Court of Appeals review the decision of the trial court  
20 in the above named case entered on January 9, 2014.  
21 This petition is based on the following memorandum  
22 of points and authorities.  
23

24 Dated on this 15<sup>th</sup> day of January, 2014 and  
25 respectfully submitted by: PA Robledo, Pro Se Petitioner.  
26

27 Page 1  
28

# MEMORANDUM OF POINTS AND AUTHORITIES

## I. SYNOPSIS OF THE TRIAL COURT'S RULING

The trial court denied the Petition for Post-Conviction Relief filed on November 22, 2013 by claiming: "the defendant fails to provide any facts, affidavits, records, or other evidence to support why these facts could not have been discovered and provided at trial through reasonable diligence" and "the claims the defendant has raised were required to be raised in Defendant's timely Rule 32 proceedings," (see Exhibit A attached to this Petition for Review).

## II. ISSUES PRESENTED FOR REVIEW

Newly discovered facts exist that prove the outcome of the Petitioner's sentencing hearing would have been different which were discovered by the Petitioner due to the ineffective assistance of his pre-trial and first PCR counsel.

## III. FACTS MATERIAL TO THE ISSUES PRESENTED

1) The Petitioner's mental illness being dissociative identity disorder was newly discovered in January 2012. Due diligence could not discover this material fact prior to this date because the Petitioner's alternate personalities masked themselves as "voices" only so the Petitioner presented them as such which would have

1 and did prevent the diagnosis of his dissociative identity  
2 disorder at or before trial. This material fact is material  
3 to the issue of diminished capacity at the time of the  
4 crime. This material fact is not merely impeaching  
5 because it strengthens the diagnosis by Dr. Toma by  
6 placing a name to it and is supported by the testimony  
7 and report by Sarah Austin and is not merely cumulative  
8 because the Petitioner has had this disorder his entire  
9 life.

10 The Petitioner's Rule 32-PCR filed on November 22,  
11 2013 clearly states on page 3F, lines 20 to 22 and  
12 page 3H, lines 6 to 10 that this material fact is  
13 evidenced by his mental health records in the  
14 possession of the Arizona Department of Corrections  
15 that the Petitioner is not allowed to copy without a  
16 subpoena per AZDOC Policy #1104, section 1104.03,  
17 subsections 1.1 to 1.1.2.2 (see Exhibit B attached to  
18 this Petition for Review) that the Petitioner assumed  
19 the trial court was aware of and would grant him  
20 an evidentiary hearing so the records could be  
21 produced.

22 Exhibit C attached to this Petition was unavailable in  
23 November 2013. It further proves the Petitioner suffers  
24 from dissociative identity disorder because it states  
25 that he is mute which is a result of one of his  
26 personalities preventing him from speaking through a  
27

1 drait of dissociative identity disorder called co-conscious-  
2 ness. Co-consciousness was how the Petitioner com-  
3 mitted the crime for which he is serving time and  
4 proves he was insane and under diminishe capacity  
5 at and before the time of the crime.

6 This is a colorable claim and requres an evidentiary  
7 hearing to be held, but the more just relief would  
8 be a sentence correction and/or change of plea.

9  
10 2) The transcripts of the Settlement Conference of  
11 January 4, 2010 are newly discovered material  
12 fact that prove ineffective assistance of counsel  
13 and illegal sentence. Exhibits D and E are partial  
14 copies that show on page 11, lines 6 to 10, (Exhibit  
15 D) that Judge Phemonia Miller stated to the  
16 Defendant/Petitioner that his "only option is to  
17 plead to the Court," then on page 15, line 20 to 25  
18 and page 16, lines 1 to 17 (Exhibit E), Judge Phemonia  
19 Miller states his due constitutional rights. Her second  
20 statement does not supercede or correct her first like  
21 a confession before the reading of a person's Miranda  
22 Rights. The two statements confused the Petitioner  
23 which makes his plea unconstitutional and illegal  
24 because it was made unknowingly and unintentionally.  
25 The Petitioner's ineffective pre-trial and PCR counsel  
26 did not raise this issue because they were  
27  
28

1 ineffective - any competent attorney would have objected  
2 or raised the issue in a Rule 32-PCR.

3 This fact was not discovered until November  
4 2013 and meets all of the requirements for  
5 newly discovered material facts set forth in the  
6 Ariz. R. Civ. Pro and relevant case law.

7  
8 3) ARS § 13-702.01 was in the Petitioner's indictment.  
9 "ARS 13-702 and 702.01 are unconstitutional on their  
10 face." State v. Brown, 209 Ariz 200 (2004). This was  
11 discovered in November 2013 and meets all the  
12 requirements for newly discovered material facts  
13 set forth in the Ariz. R. Civ. Pro and relevant case  
14 law.

15  
16 IV. REASONS WHY THIS COURT SHOULD GRANT THIS PETITION

17 1) There was no reason, other than prejudice by the  
18 Judge, for the Petition for PCR filed on November  
19 22, 2013 without an evidentiary hearing because the  
20 Petitioner has raised colorable claims. (see Sections  
21 II and III above and corresponding exhibits)

22  
23 2) "A pleading defendant must be afforded an  
24 opportunity to assert a claim regarding the effective-  
25 ness of his first PCR attorney; the obvious method  
26 is by means of a [successive] Petition for PCR." State

1 v. Pruett, 185 Ariz. 128, 912 P.2d 1357 (App. 1995).

2

3 3) "An objection to an illegal sentence cannot be  
4 waived," State v. Givens, 206 Ariz. 186, 76 P.3d 457  
5 (App. 2003), because: "An illegal sentence is no  
6 sentence at all." State v. Carbajal, 184 Ariz. 117, 118, 907  
7 P.2d 503, 504 (App. 1995).

8

9 4) The Petitioner's mental illness, i.e. - dissociative  
10 identity disorder, must be taken into consideration  
11 because: "If an issue was not raised previously  
12 due to that [i.e. - the Petitioner's mental illness]  
13 or ~~the~~<sup>the</sup> ~~PDR~~ non-action of counsel, he should not be  
14 penalized now." Stewart v. Smith, \_\_\_\_\_ Ariz. \_\_\_\_\_  
15 (2002).

16

## 17 V. Conclusion

18 The only just relief is for a correction of the  
19 Petitioner's sentence to the presumptive of 10.5 years  
20 at 85% or lower minus all time served.

21

22 \*Pages 2 to 6 were completed on January 20,  
23 2014 by: PDRobleso, Pro-Se Petitioner. \*

24

25

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# EXHIBIT A

Exhibit A Start Page

*I received on  
1-14-2014*

Michael K. Jeanes, Clerk of Court  
\*\*\* Electronically Filed \*\*\*  
01/10/2014 8:00 AM

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2009-110121-001 SE

01/09/2014

JUDGE PRO TEM PHEMONIA L. MILLER

CLERK OF THE COURT  
Y. King  
Deputy

STATE OF ARIZONA

DIANE M MELOCHE

v.

PAUL ANTHONY ROBLEDO (001)

PAUL ANTHONY ROBLEDO  
#250767 ASPC LEWIS/BACHMAN  
P O BOX 3500  
BUCKEYE AZ 85326

**POST-CONVICTION RELIEF DENIED**

The Court has reviewed defendant's Notice of Post-Conviction Relief and Petition for Post-Conviction Relief Record, both filed on November 22, 2013.

Defendant pled guilty to count 1, Attempted First Degree Murder, a Class 2 Dangerous Felony. The Court sentenced the defendant on February 8, 2010, to a 21 year term of imprisonment. This is the defendant's third Rule 32 proceeding; it is both untimely and successive.

The defendant claims, pursuant to Ariz. R. Crim. P. 32.1(e), that there are newly discovered material facts which probably would have changed the verdict or sentence in her case. To be entitled to post-conviction relief based on newly discovered evidence, the defendant must show that the evidence was discovered after trial although existed before trial; the evidence could not have been discovered and produced at trial or appeal through reasonable diligence; the evidence is neither solely cumulative nor impeaching; the evidence is material; and the evidence probably would have changed the verdict or sentence. *State v. Saenz*, 197 Ariz. 487, 489, ¶ 7, 4 P.3d 1030, 1032 (App. 2000), *see also* Ariz. R. Crim. P. 32.1(e).



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2009-110121-001 SE

01/09/2014

Defendant fails to support this claim. The defendant states that he has been diagnosed with dissociative identity disorder. However, the defendant fails to provide any facts, affidavits, records, or other evidence to support why these facts could not have been discovered and produced at trial through reasonable diligence

Defendant is claiming, pursuant to Ariz. R. Crim. P. 32.1(a), that he received ineffective assistance of counsel. Defendant also claims, pursuant to Ariz. R. Crim. P. 32.1(c), the prison sentence imposed by the Court exceeded the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law. Defendant cannot raise these claims in an untimely or successive Rule 32 proceeding because an untimely notice may only raise claims pursuant to Rule 32.1(d), (e), (f), (g), or (h). Ariz. R. Crim. P. 32.4(a). In addition, the claims the defendant has raised were required to be raised in Defendant's timely Rule 32 proceeding. Therefore, the defendant is procedurally precluded from raising them now. Ariz. R. Crim. P. 32.2(a)(2).

A defendant must comply strictly with Rule 32 by asserting substantive grounds which bring him within the provisions of the Rule in order for the Court to grant relief. *State v. Manning*, 143 Ariz. 139, 141, 692 P.2d 318, 320 (1984). Defendant fails to state a claim for which relief can be granted in an untimely Rule 32 proceeding. Rule 32.4(a).

**IT IS THEREFORE ORDERED** dismissing Defendant's Notice of Post-Conviction Relief and Petition for Post-Conviction Relief.

**EXHIBIT B**

**Exhibit B Start Page**

1.3.9      Reviews are permitted once per quarter.

1.3.9.1      If the inmate needs an additional review because of a litigation issue, the inmate shall submit an Inmate Letter to the Contract Facility Health Administrator explaining the need for additional record reviews.

**1104.03      REQUESTS FROM INMATES TO OBTAIN COPIES OF THEIR MEDICAL RECORDS FOR USE IN LITIGATION OF MEDICAL ISSUES**

1.1      Access to Obtain Copies of the Medical Record - Upon receipt of a subpoena or an Inmate Letter that identifies the specific portions of the Medical Record to be copied, the Medical Records/Regional Office shall:

1.1.1      Forward the request to the Office of the Attorney General, via the Discovery Unit, for advice as to whether the following requirements have been met in relation to the case:

1.1.1.1      The court has stipulated the inmate may act as his own attorney.

1.1.1.2      The request is related to a bona fide lawsuit that has been validly served on the Department or other defendant.

1.1.1.3      The request for discovery has been filed.

1.1.1.4      The Office of the Attorney General has not filed, in court, an objection to the production of the records.

1.1.2      Upon notification from the Office of the Attorney General that all requirements have been met, ensure the copies of the appropriate portions of the Medical Record are prepared by Health Services staff, who shall give the copies directly to the inmate after the following have been completed:

1.1.2.1      The inmate has signed the Inmate Medical Record Waiver of Liability, Form 1104-8.

1.1.2.2      Health Services staff who provided the copies to the inmate sign the Inmate Medical Record Waiver of Liability form as witnesses to the inmate's signature and file the form in the inmate's Medical Record.

1.2      Charges for Copies - The Medical Records/Regional Office shall charge the appropriate fee for the information copied from a Medical Record, as follows:

1.2.1      An inmate who is not indigent shall be charged .50 cents for each page.

1.2.1.1      The inmate shall complete the Inmate Request for Withdrawal, Form 905-1.

1.2.2      An indigent inmate who submits a copy of the approved Application for Indigent Status - Health and Welfare, Form 905-2, shall not be charged for copies.

# EXHIBIT C

Exhibit C start Page

The following page further proves Dr. Taylor's negligence. She claimed that she was unable to complete an assessment because I "refused to speak", which proves her negligence (and/or incompetence) because on 5/2/2013, a psychologist completed an assessment and noted that I am "not able to speak." And on 6-13-2013, I was again "noted to be mute." Both of these entries contradict Dr. Taylor's assertion and proves her negligence.

In addition, the following page proves that I am mute due to my mental illness.

*I received on 9-30-2013*  
**Arizona Department of Corrections**



JANICE K. BREWER  
GOVERNOR

1601 WEST JEFFERSON  
PHOENIX, ARIZONA 85007  
(602) 542-5497  
www.azcorrections.gov



CHARLES L. RYAN  
DIRECTOR

**MEDICAL GRIEVANCE APPEAL: TO THE DIRECTOR**

Inmate Name: ROBLEDO, PAUL

ADC No.: 250767

Case No.: L31-032-013

Institution: ASPC-LEWIS/BARCHEY

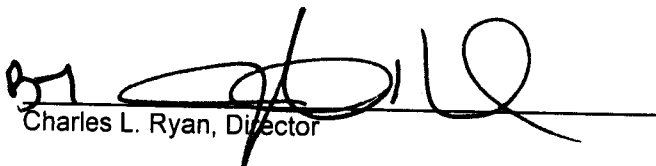
Date Received: July 29, 2013

I have reviewed your Grievance Appeal in which you allege violation of your "Eighth Amendment Right" because you "have not: 1) received a response to your grievance; and 2) been seen by a psychologist or psychiatrist to evaluate your muteness or renew your Vistaril prescription".

Your Grievance Appeal has been investigated including a review of your medical and pharmacy records. Based on our findings, your appeal is denied. The reasons for this decision are:

1. During our investigation, we came across a 7/23/13 response to your Grievance. Additionally, you were also able to submit an Appeal at the Director's level which has been investigated and is addressed through this response.
2. Our review shows you are being followed by mental health staff for your mental health issues including muteness. During an evaluation of 5/2/13, the psychologist noted you are not able to speak and there is lack of trust. Your mood was noted to be stable and you were a good listener. She ordered a continuation of your current medication (Vistaril). You had a follow-up visit on 6/13/13 at which time you indicated that you "would like a diagnosis of "Dissociative Identity Disorder (DID) so you can appeal your case". You also reported you "did not like the yard/dorm setting and would like to finish your sentence at home". You were noted to be mute, but cooperative, alert, oriented with logical thought process, appropriate affect and normal psychomotor behavior and thought content; you also denied that you were a danger to self or danger to others. You were previously informed through the Department's response to Grievance Appeal Case No.: A01-018-013 that Dr. Taylor and other mental health staff were unable to complete the assessment because you "refused to speak". Your pharmacy records confirm that the following medication orders were recently filled: Ibuprofen on 7/10/23, Divalproex Sodium on 7/23/13, and Ibuprofen, Calcium Carbonate and Vistaril on 8/6/13. Our review showed that you are receiving appropriate mental health care and you are continuing to be monitored.
3. Please submit a Health Needs Request (HNR) if you have additional medical concerns or needs which you wish to discuss with a medical provider.

This response concludes the medical grievance process per Department Order 802.06 Medical Appeals to the Director.

  
Charles L. Ryan, Director

8/28/13  
Date

cc: Facility Health Administrator, ASPC-Lewis  
C.O. Inmate File

# EXHIBIT D

Exhibit D Start Page

1 THE COURT: So Mr. Robledo, the State doesn't have  
2 to make you a plea offer in this case and they've chosen not  
3 to make you a plea offer -- well not one that will cap it at  
4 ten and a half years anyway. So they don't have to make you  
5 a plea offer.

6 Your only option is to plead to the Court. That  
7 means you would plead guilty, you would admit that you  
8 committed the offense to the Court and then you will leave  
9 the sentencing up to the judge, so the sentencing judge, to  
10 determine whether you get seven years or anywhere from seven  
11 to 21 years.

12 Do you understand that?

13 THE DEFENDANT: Yeah.

14 THE COURT: All right. Do you have an idea of what  
15 you want to do today?

16 THE DEFENDANT: No.

17 THE COURT: His other option is to -- you can have a  
18 trial --

19 THE DEFENDANT: No, that's --

20 THE COURT: -- on this charge and let the jury  
21 decide whether to find you guilty or not guilty.

22 THE DEFENDANT: No. I'd be willing to just plead  
23 directly to the Court.

24 THE COURT: Okay. All right. Let's see if anybody  
25 else has read --

**AVI**



# EXHIBIT E

Exhibit E Start Page

1 THE DEFENDANT: Yes.

2 THE COURT: All right.

3 THE DEFENDANT: The \$150,000 that is --

4 MS. HOUCK: That's a maximum fine.

5 THE COURT: That's the maximum --

6 MS. HOUCK: You may not --

7 THE COURT: -- fine.

8 MS. HOUCK: -- be ordered to pay any fine at all.

9 THE COURT: So it could be anywhere from zero to  
10 \$150,000, that's the maximum fine.

11 THE DEFENDANT: In addition to restitution?

12 THE COURT: In addition --

13 MS. HOUCK: Yeah.

14 THE COURT: -- to restitution.

15 MS. HOUCK: Yeah.

16 THE COURT: You understand that?

17 THE DEFENDANT: Yeah.

18 THE COURT: Any questions about that?

19 THE DEFENDANT: No.

20 THE COURT: All right. Mr. Robledo, I'll need to go  
21 over your constitutional rights with you as well as the  
22 immigration advisement.

23 And if there's anyone else in the courtroom who's  
24 going to accept the State's plea offer, please pay close  
25 attention to your constitutional rights as well as the

**AVTranz**

E-Reporting and E-Transcription  
Phoenix (602) 263-0885 • Tucson (520) 403-8024  
Denver (303) 634-2295

1 immigration advisement:

2           You have the right to plead not guilty to all of the  
3 charges; you have the right to have a jury trial; you have  
4 the right to have an attorney represent throughout all of the  
5 proceedings, including the trial; And you are presumed  
6 innocent of all the charges unless and until the State has  
7 proven you guilty beyond a reasonable doubt;

8           You have the right to confront and cross-examine the  
9 State's witnesses; you have the right to present your own  
10 evidence and witnesses and have the Court subpoena them to  
11 appear for your trial;

12           You have the right to testify, but if you choose not  
13 to testify, your silence cannot be used against you because  
14 you have the right to remain silent;

15           You have the right to have any aggravating factors  
16 proved to a jury at trial; you have the right appeal your  
17 case directly to a higher court.

18           But if you plead guilty you give up these rights.

19           Do you understand your constitutional rights?

20           THE DEFENDANT: Yes.

21           THE COURT: Do you have any questions about your  
22 constitutional rights?

23           THE DEFENDANT: No, Your Honor.

24           THE COURT: And do you wish to give up your rights  
25 for this case only and plead guilty today?

**AVTrans**

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Denver (303) 634-2295

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was placed in the inmate mailing system on January 22, 2014 to be mailed to:

The Attorney General of Arizona  
Criminal Appeals Division  
1225 W. Washington  
Phoenix, AZ 85007-2997

The Maricopa County Attorney  
8th Floor  
301 W. Jefferson St.  
Phoenix, AZ 85003

And the original plus 4 copies to:

The Arizona Court of Appeals - Division One  
1501 W. Washington  
Phoenix, AZ 85007

by: PATRICK, Pro-Se Petitioner.